

**CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 16-03**

AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE TO PROHIBIT SMOKING IN CITY PARKS

WHEREAS, the Tigard City Council has general supervision, management, and control of all public parks and open spaces in the City; and

WHEREAS, smoking in City parks and open spaces negatively affects non-smokers and is contrary to the City's strategic vision that the community enjoy healthy lives; and

WHEREAS, City Council wishes to ban smoking in City parks and open spaces; and

WHEREAS, City Council believes it is appropriate to phase-in the penalties imposed for violation of this ordinance in order to allow for greater community outreach.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

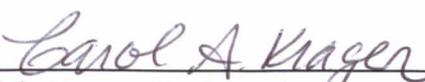
SECTION 1: Section 7.52 of the Tigard Municipal Code is hereby amended as provided in Exhibit A (additional language *italicized* and deleted language ~~stricken~~).

SECTION 2: Section 7.52.225(b) shall be effective July 1, 2016.

SECTION 3: All remaining provisions in this ordinance shall be effective 30 days after its passage by the council, signature by the mayor, and posting by the city recorder.

SECTION 4: If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

PASSED: By UNANIMOUS vote of all council members present after being read by number and title only, this 26th day of January, 2016.



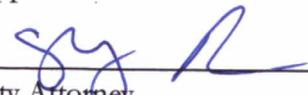
Carol A. Krager, City Recorder

APPROVED: By Tigard City Council this 26th day of January, 2016.



John L. Cook, Mayor

Approved as to form:



City Attorney

1/26/16

Date

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Chapter 7.52 PUBLIC PROPERTY USE.

Sections:

- 7.52.010 Policy Of City Council.
- 7.52.020 Delegation Of Authority.
- 7.52.030 Regulations Prescribed By Council.
- 7.52.040 City Employees Not Affected.
- 7.52.050 Closures.
- 7.52.060 Conduct Restrictions.
- 7.52.070 Damage--Payment For Restoration.
- 7.52.080 Parks--Sales And Services For Hire Restricted.
- 7.52.090 Parks--Advertising And Decorative Devices Forbidden.
- 7.52.100 Alcoholic Beverages in Parks
- 7.52.110 Parks--Rubbish Accumulation Prohibited.
- 7.52.120 Parks--Vandalism Prohibited.
- 7.52.130 Parks--Gambling Prohibited.
- 7.52.140 Parks--Firearms Or Fireworks Prohibited.
- 7.52.150 Parks--Molesting Animals, Birds And Fish Prohibited.
- 7.52.170 Parks--Fishing And Bathing Restrictions.
- 7.52.180 Parks--Notice Mutilation Prohibited.
- 7.52.190 Parks--Animals Running At Large Prohibited.
- 7.52.200 Parks--Use Of Established Entrance Required.
- 7.52.210 Parks--No Admittance Areas.
- 7.52.220 Parks--Swing And Hammock Location.
- 7.52.225 Parks--Smoking Prohibited
- 7.52.230 Permit--Required.
- 7.52.240 Permit--Exhibition Required.
- 7.52.250 Permit--Subject To Ordinances And Regulations.
- 7.52.260 Public Convenience Stations.
- 7.52.270 Traffic Regulations.

7.52.280 Public Drinking Fountain-- Injury Prohibited.

7.52.290 Signs, Lights, Call Boxes, Hydrants Injury Prohibited.

7.52.300 Penalty For Violation.

7.52.010 Policy Of City Council.

The City Council, except as otherwise expressly provided, declares its intention to exercise general supervision, management and control of all public parks, public parkways, public squares, public grounds, including, but not restricted to streets, boulevards, paths, sidewalks, greenways, rest areas, playgrounds and other areas, hereinafter collectively referred to as "public areas" whether publicly or privately owned, dedicated, leased or otherwise set aside for public use and not under the supervision or control of any other public agency, and the Council declares its intention to prescribe rules and regulations as herein set forth or from time to time as necessary with respect to such public areas.

For purposes of this chapter, "park" is defined as an open space or recreational property owned or maintained by the City and open to the public.

All public areas as herein designated for general public use shall be kept and maintained for the use and benefit of the public, subject to such reasonable and necessary rules and regulations as herein prescribed or as may be from time to time adopted to protect and preserve the enjoyment, convenience and safety of the general public in the use thereof. (Ord. 71-12 §1, 1971).

7.52.020 Delegation Of Authority.

The City Manager is authorized to make such reasonable rules and regulations not inconsistent with this and other City ordinances and the policies of the Council as herein enunciated, as may be necessary for the control and management

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of the public areas hereinabove designated. All such rules and regulations shall be set forth in writing and, to the extent deemed necessary by the City Manager, shall be posted in conspicuous places in the areas affected thereby, for the guidance of the general public and individual users.

If any person feels aggrieved by any such rule or regulation, he may appeal to the Council by filing with the City Recorder a remonstrance against such rule or regulation, which shall be placed on the agenda of the Council at its next regular meeting, and until amended or repealed by the Council such rule or regulation shall remain in full force and effect. (Ord. 03-08, Ord. 71-12 §2, 1971).

7.52.030 Regulations Prescribed By Council.

The Council finds that it is in the public interest and necessary for the peace, health and safety of the general public that the rules and regulations set forth in this chapter be enforced, and for the purposes herein set forth are adopted. (Ord. 71-12 §3(part), 1971).

7.52.040 City Employees Not Affected.

Nothing contained herein shall prevent the performance of any act or duty by City employees which has been duly authorized by the department of public works or the police department. (Ord. 71-12 §3(25), 1971).

7.52.050 Closures.

No person shall ride, drive or walk on such parts or portions of the parks or pavements as may be closed to public travel, or interfere with barriers erected against the public. (Ord. 71-12 §3(16), 1971).

7.52.060 Conduct Restrictions.

No one shall sleep on the seats or benches, or use loud, boisterous, threatening, abusive, insulting or indecent language, or behave in a disorderly manner, or do any act tending to a breach of the public peace. (Ord. 71-12 §3(19), 1971).

7.52.070 Damage--Payment For Restoration.

(a) Owners or persons in control of, or persons who permit the entry of any dog, horse or other animal into any public area under the control of the City, in addition to any penalties imposed by this chapter for violation hereof, shall be held liable for, and shall pay to the City, the full value of repair or restoration of any public property damaged or destroyed, and if not paid upon demand by the City, recovery of same may be sought by action brought in the name of the City in any court of competent jurisdiction.

(b) Any person who shall utilize the public areas herein described and who shall damage or destroy any public property under the control of the City, in addition to any penalties imposed by this chapter for violation hereof, shall be held liable for, and shall pay to the City, the full value of repair or restoration of any public property damaged or destroyed, and if not paid upon demand by the City, recovery of same may be sought by action brought in the name of the City in any court of competent jurisdiction. (Ord. 71-12 §3(24), 1971).

7.52.080 Parks--Sales And Services For Hire Restricted.

(a) It is unlawful for any person to sell or offer for sale any article or perform or offer to perform any service for hire in any of the parks

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without a written permit for such concession properly and regularly granted by the City Manager or designee.

(b) Payment of the Tigard City Business Tax is required prior to issuance of the permit. (Ord. 03-08, Ord. 92-33 §1(Exh. A)(part), 1992: Ord. 71-12 §3(2), 1971).

7.52.090 Parks--Advertising And Decorative Devices Forbidden.

It is unlawful for any person to place or carry any structure, sign, bulletin board or advertising device of any kind whatever, or erect any post or pole or the attachment of any notice, bill, poster, sign wire, rod or cord to any tree, shrub, fence, railing, fountain, wall, post or structure, or place any advertising, decorative or other device of any kind whatever, on any of the vases, statues, bridges or monuments in any park; provided, that the City Manager may by a written permit allow the erection of temporary decoration on occasions of public celebration or holidays. (Ord. 03-08, Ord. 71-12 §3(3), 1971).

7.52.100 Alcoholic Beverages in Parks

(1) For purposes of this section:

(a) "Alcoholic beverage" means any liquid containing any form of alcohol, including but not limited to malt and fermented beverages, whether licensed for sale in the state or not.

(b) "Person's own use" means for use by the person as well as use by any person attending the same social event. As used in this definition, "person" means a person of legal age to possess or drink alcoholic beverages.

(2) Except as provided in this section, it is unlawful for any person to take into or possess any alcoholic beverage in a City park other than for the person's own use. No intoxicated person shall enter or remain in any City park. The sale of beer or wine in City parks shall be allowed only pursuant to

a permit issued by the City Manager on recommendation of the Police Chief, and any such sale must comply with all applicable state liquor laws and permitting requirements. No other alcoholic beverages may be sold in City parks. The limited use and sale of alcoholic beverages allowed by this subsection does not apply to the parks listed in Subsection 3.

(3) It is unlawful to possess, control, or consume any alcoholic beverage in any existing or future City park located within the downtown Urban Renewal Zone.

(4) Failing to comply with any provision of this section shall be a violation. The civil penalty for violation of this section shall not exceed \$600 for the first violation, and shall not exceed \$1,000 for subsequent violations within 12 months of a previous violation of this section.

(5) All alcoholic beverages and alcoholic beverage containers brought into, possessed, or otherwise present in a park in violation of this section are contraband and may be disposed of or retained as evidence by the City. (Ord. 07-14, Ord. 06-08, Ord. 03-08, Ord. 84-48 §1, 1984: Ord. 71-12 §3(4), 1971).

7.52.110 Parks--Rubbish Accumulation Prohibited.

It is unlawful for any person to obstruct the free use and enjoyment of any park by misuse of refuse containers or by placing any straw, dirt, chips, paper, shavings, shells, ashes, swill or garbage, or other rubbish, or refuse or debris, in or upon any park, except in designated trash receptacles or to distribute any circulars, cards or other written or printed matter in any park. (Ord. 82-62 §1, 1982: Ord. 71-12 §3(5), 1971).

7.52.120 Parks--Vandalism Prohibited.

It is unlawful for any person to remove, destroy, break, injure, mutilate, or deface in any

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way any structure, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, tree, shrub, fern, plant, flower or other property in any park unless otherwise licensed or privileged to do so. (Ord. 99-31, Ord. 71-12 §3(6), 1971).

7.52.130 Parks--Gambling Prohibited.

It is unlawful for any person to play any game of chance or to carry on betting of any kind within the park boundaries. (Ord. 71-12 §3(7), 1971).

7.52.140 Parks--Firearms Or Fireworks Prohibited.

It is unlawful for any person to use firearms, firecrackers, fireworks, torpedoes or explosives of any kind in any park including air guns, bb guns, or bows and arrows. (Ord. 82-62 §2, 1982; Ord. 71-12 §3(8), 1971).

7.52.150 Parks--Molesting Animals, Birds And Fish Prohibited.

It is unlawful for any person to use any weapon, stick, stone or missile of any kind to the destruction, injury, disturbance or molestation of any wild or domestic animal, fowl or fish within the park limits.

It is unlawful for any person to give, or offer, or attempt to give to any animal within the parks, any tobacco or other known noxious articles, or anything the giving of which is prohibited by printed notices conspicuously posted therein. (Ord. 71-12 §3(9), 1971).

7.52.170 Parks--Fishing And Bathing Restrictions.

It is unlawful for any person to fish, wade, swim or bathe in any of the parks except in the places designated by regulation for such purposes. The department of public works, with the

approval of the City Manager, shall have authority to allow fishing in the waters of any park of the City by posting adjacent to such waters a sign or signs stating that such fishing is authorized, and by posting age limits such fishing may be restricted to juveniles or others under the age as designated by the sign, and it is unlawful for any person over the age limit as posted to fish in any such waters of a City park. (Ord. 03-08, Ord. 71-12 §3(11), 1971).

7.52.180 Parks--Notice Mutilation Prohibited.

It is unlawful for any person to injure, deface or destroy any notice of the rules and regulations for the government of the parks, which shall have been posted or permanently fixed by order or permission of the City Manager. (Ord. 03-08, Ord. 71-12 §(12), 1971).

7.52.190 Parks--Animals Running At Large Prohibited.

It is unlawful for the owner, possessor or keeper of any animal to permit such animal to roam at large in any park, and, if such animal is found in any park, it may be impounded. (Ord. 71-12 §3(13), 1971).

7.52.200 Parks--Use Of Established Entrance Required.

No one shall enter or leave the parks except at an established entrance, and no one shall enter or remain in the parks after the hours fixed by regulation. (Ord. 71-12 §3(14), 1971).

7.52.210 Parks--No Admittance Areas.

No person shall enter any building, enclosure, or place within any of the parks upon which the words "no admittance" shall be displayed or posted by sign, placard, or otherwise. (Ord. 71-12 §3(15), 1971).

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7.52.220 Parks--Swing And Hammock Location.

No swings or hammocks shall be hung or swung in any of the parks, except on the posts erected for the purpose. (Ord. 71-12 §3(20), 1971).

7.52.225 Parks—Smoking Prohibited

(a) *It is unlawful for any person to smoke in any park. "To smoke" means inhaling, exhaling, or possessing any lighted or burning cigar, cigarette, pipe, weed, plant, or other substance grown, manufactured, or processed which is intended to be used for smoking in any form. "To smoke" also means inhaling, exhaling, or possessing an electronic cigarette or a similar device intended to emulate smoking.*

(b) *Failing to comply with this section shall be a violation. The civil penalty for violation of this section shall not exceed \$100 for the first violation, and shall not exceed \$500 for subsequent violations within 12 months of a previous violation of this section. Each violation of this section shall constitute a separate offense.*

7.52.230 Permit--Required.

Use of the public areas herein described for organized group picnics, political or religious gatherings, or groups consisting of more than twenty-five persons in attendance at any one time, is unlawful unless a written permit has been issued with the approval of the City Manager or City Recorder. (Ord. 03-08, Ord. 82-62 §3, 1982; Ord. 71-12 §3(1), 1971).

7.52.240 Permit--Exhibition Required.

Any person claiming to have a permit from the City shall produce and exhibit such permit

upon request of the department of public works or the police department. (Ord. 71-12 §3(17), 1971).

7.52.250 Permit--Subject To Ordinances And Regulations.

All permits issued by the City shall be subject to the City's ordinances. The persons to whom such permits are issued shall be bound by the rules, regulations and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued, as well as for any breach of such rules, regulations and ordinances, to the person or persons so suffering damages or injury. (Ord. 71-12 §3(18), 1971).

7.52.260 Public Convenience Stations.

(a) It is unlawful for any person to blow, spread or place any nasal or other bodily discharge, or spit, urinate or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public convenience station or in any place in such station, excepting directly into the particular fixture provided for that purpose. Nor shall any person place any bottle, can, cloth, rag, or metal, wood or stone substance in any of the plumbing fixtures in any such station.

(b) It is unlawful for any person to stand or climb on any closet, closet seat, basin, partition or other furniture or fitting, or to loiter about or push, crowd or otherwise act in a disorderly manner, or to interfere with any attendant in the discharge of his or her duties, or whistle, dance, sing, skate, swear, or use obscene, loud or boisterous language within any public convenience station, or at or near the entrance thereof.

(c) It is unlawful for any person to cut, deface, mar, destroy, break, remove or write on or scratch any wall, floor, ceiling, partition, fixture

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or furniture, or use towels in any improper manner, or waste soap, toilet paper, or any of the facilities provided in any public convenience station. (Ord. 71-12 §3(21), 1971).

7.52.270 Traffic Regulations.

Except as may be otherwise specifically prescribed in this chapter or other City ordinances, the motor vehicle code of 1970 of the City of Tigard regulating street traffic shall be in full force and effect in all public areas described in this chapter.

The following regulations are made applicable to public areas within the City and subject to the City's control:

(1) No one shall ride or drive any bicycle, motorcycle, motor vehicle, truck, wagon, horse, or any vehicle or animal in any part of the parks except on the regular drives designated therefor; provided, that baby carriages and such vehicles as are used in the park service are not included in the foregoing prohibition.

(2) No one shall drive any hearse, vehicle in a funeral procession, market wagon, milk wagon, dirt car, moving van, dray, truck, heavy-laden vehicle, or vehicle carrying or ordinarily used in carrying merchandise, goods, tools, material or rubbish, except such as are used in the park service, over any drive or boulevard in any of the parks; provided, however, the City Manager in his discretion may grant admission in writing for vehicles to carry materials over mark drives or boulevards to buildings abutting on parks when no other road, street or way is accessible or passable.

(3) No one shall hitch horses or other animals to any tree, shrub, fence, railing or other structure, except such as are provided for such purpose, or allow horses or other animals to stand unhitched while the driver or attendant is beyond reach of such horse or other animal.

(4) It is unlawful for any person to park any motor vehicle on any park or playground area in the City, except in regularly designated parking areas. The police department shall have and exercise authority to tow any vehicle found parked in a park or playground area not designated for parking purposes, and to impound such vehicle and to impose and collect fees for towing and storage.

(5) It is unlawful for any person to store, park, or leave standing unattended for a continuous period of more than twenty-four hours, any motor vehicle, boat, trailer, conveyance or other personal property within any public area under the City's control. (Ord. 03-08, Ord. 71-12 §3(26), 1971).

(6) 7.52.280 Public Drinking Fountain--Injury Prohibited.

It is unlawful for any person to willfully mark, scratch, disfigure, remove or in any manner injure any public drinking fountain, or throw, place or deposit in any cup or basin of same any cigar stub or cigarette stub, or any other matter or refuse whatever, or obstruct the regular flow of water thereof in any manner whatever. (Ord. 71-12 §3(22), 1971).

7.52.290 Signs, Lights, Call Boxes, Hydrants Injury Prohibited.

It is unlawful for any person to willfully cut, remove, deface or in any manner injure or damage any street sign, any street, bridge or subway light, light fixture, or any police or fire call box, or any hydrant, fence, gate or enclosure, or any part thereof, placed in any areas. (Ord. 71-12 §3(23), 1971).

7.52.300 Penalty For Violation.

Any person violating any provision of this chapter, upon conviction shall be punished, by a fine of not more than five hundred dollars. ~~or by imprisonment in the City or County jail for not~~

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~~exceeding six months, or by both such fine and imprisonment.~~ (Ord. 71-12 §4, 1971).